

**In the**

**SUPREME COURT OF MISSOURI**

**En Banc**

**May Session, 2005**

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**Report of the Office of the Chief Disciplinary Counsel for the year  
2004 together with the Financial Report of the Treasurer of the  
Advisory Committee Fund for 2004**

**MARIDEE F. EDWARDS  
Chief Disciplinary Counsel**

IN THE  
SUPREME COURT OF MISSOURI  
EN BANC

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MAY SESSION, 2005

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REPORT OF THE OFFICE OF CHIEF DISCIPLINARY COUNSEL FOR  
THE YEAR 2004 TOGETHER WITH THE FINANCIAL REPORT OF  
THE TREASURER OF THE ADVISORY COMMITTEE FUND FOR  
2004.

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To the Honorable Judges of The Court:

Comes now the Chief Disciplinary Counsel, and respectfully reports  
to the Court on matters concluded during calendar year 2004 or pending on  
December 31, 2004.

I.

**DISCIPLINARY ACTIONS BEFORE THE COURT**  
**In the calendar year 2004, the following disciplinary matters were**  
**before the Supreme Court**

NAME	DISPOSITION
<b>BANTE, CANDACE #36977</b> Hillsboro, MO	Suspension on 6/22/04 Suspension stayed-Placed on Probation for one year on 6/22/04
Stipulation as to Facts & Joint Recommendation filed on January 21, 2004. Recommendations as to Sanctions filed June 14, 2004.	Suspended by order of the Court on June 22, 2004; suspension stayed and Respondent placed on probation for one year with conditions on June 22, 2004.
<b>BANTE, SHARON M. #36964</b> DeSoto, MO	Suspension on 1/27/04
DHP Decision and Record filed on October 31, 2003. Informant's brief filed November 26, 2003. Motion to submit without further process filed December 31, 2003.	Suspended on January 27, 2004, and the Court shall entertain no application for reinstatement for six months from January 27, 2004, with prerequisites for filing a reinstatement petition.
<b>BROWN, JEFFREY L. #45073</b> Kansas City, MO	Disbarred on 5/25/04
DHP Decision and Record filed on November 17, 2003. Briefed and argued. Disbarred by order of the Court on May 25, 2004.	

NAME	DISPOSITION
<b>CATO, SARA #38358</b> St. Louis, MO	Interim Suspension on 7/2/03 Surrender and disbarment on 1/30/04
Rule 5.24-Information for Interim Suspension filed on June 27, 2003. Suspended on July 2, 2003, pending final disposition of disciplinary proceedings. Trustee appointed to protect the interests of Respondent's clients.	Respondent filed voluntary surrender for medical reasons in Supreme Court on November 20, 2003, and a Motion to Stay disciplinary proceedings. OCDC filed Opposition to Motion to Stay and on November 24, 2003, Petitioner's Motion for Stay was overruled and Petition for voluntary surrender was denied by the Supreme Court. Motion for reconsideration was filed by Respondent in Supreme Court on December 8, 2003. The Court then ordered Petitioner's motion for reconsideration sustained and ordered that the surrender be accepted and Respondent was disbarred by order of the Court on January 30, 2004.
<b>COAN, KEVIN T. #47216</b> St. Louis, MO	Interim Suspension on 11/23/04 Disbarred on 3/2/05
Rule 5.21-Information and Motion for Discipline filed on October 22, 2004. Interim suspension pending the final disposition of the post conviction proceedings in the State of Illinois on November 23, 2004. (Thereafter, Respondent filed a Motion to Set Aside Order of Interim Suspension. Informant filed a response and Respondent was disbarred by order of the Court on March 2, 2005.)	
<b>COWAN, WILLIAM R. #47302</b> Kansas City, MO	Suspended on 10/26/04 Suspension Stayed/Probation on 10/26/04
Joint Stipulation as to Facts, Conclusions of Law & Recommendation to DHP Panel, and DHP Decision filed on October 5, 2004. Suspended by order of the Court on October 26, 2004.	Suspension stayed and Respondent placed on probation for eighteen (18) months from October 26, 2004.

NAME	DISPOSITION
<b>CUSHMAN, CHRISTOPHER A. #42773</b> Raytown, MO	Surrendered License Disbarred on 8/20/04
Voluntary Surrender of license filed on July 15, 2004. Surrender of license accepted and Respondent disbarred by order of the Court on August 20, 2004.	

<b>DECLUE, DAVID M. #39931</b> Normandy, MO	Default Disbarment on 8/4/04
Information with Notice of Default filed on August 4, 2004. Default disbarment by order of the Court on August 4, 2004.	

<b>DEVKOTA, TARAK A. #51604</b> Kansas City, MO	Interim Suspension on 12/22/04
Rule 5.24-Information for interim suspension and appointment of trustee filed on December 21, 2004. Suspended on December 22, 2004, until further order of Supreme Court. Co-Trustees appointed to protect the interests of Respondent's clients.	

<b>DEVOTO, ROBERT L. #28229</b> St. Louis, MO	Default Disbarment on 11/3/03 Disbarment Set Aside 11/21/03 Suspended on 1/27/04 Suspension Stayed-Placed on Probation on 1/27/04
Information with Notice of Default filed November 3, 2003.	
Respondent's motion to set aside order of disbarment sustained by Supreme Court on November 21, 2003. Respondent granted until December 15, 2003, to file an answer to the information with the Chair of the Advisory Committee.	
Suspended by order of the Court on January 27, 2004, for six months; suspension stayed pursuant to the terms of the Stipulation and Respondent placed on probation for two years on January 27, 2004.	

NAME	DISPOSITION
<b>DYER, STEVEN E. #45397</b> St. Louis, MO	Suspended on 12/21/04

Rule 5.20-Information and Motion for Discipline filed on June 7, 2004. (Reciprocal-US Bankruptcy Court for the ED of MO). Suspended from the practice of law on December 21, 2004, with leave to apply for reinstatement not earlier than six months from December 21, 2004, with specified conditions.

<b>EMMONS, KYLE DAVID #50707</b> Columbia, MO	Surrendered License Disbarred on 9/10/04
Voluntary Surrender of license filed on August 26, 2004. Surrender of license accepted and Respondent disbarred by order of the Court on September 10, 2004.	

<b>FISHER, BRADLEY J. #24910</b> Springfield, MO	Default Disbarment on 11/13/03 Disbarment Set Aside 12/9/03 Public Reprimand/Probation on 10/26/04
Information with Notice of Default filed on November 13, 2003. Default disbarment by order of the Court on November 13, 2003.	
Motion to set aside default disbarment sustained by Court on December 9, 2003. Respondent granted until December 31, 2003, to file an answer with the Chair of the Advisory Committee.	
DHP Decision and Stipulation of Concurrence filed on September 21, 2004. Public Reprimand and placed on probation for one year by order of the Court on October 26, 2004.	

NAME	DISPOSITION
<b>GOTTLIEB, ADRIENNE G. #21858 Overland Park, KS</b>	Suspended on 9/28/04 Suspension Stayed/Placed on Probation on 9/28/04
Joint Stipulation of Facts, Conclusions of Law, Joint Recommended Discipline and Settlement Agreement filed August 27, 2004.	
Suspended for 24 months from September 28, 2004; suspension stayed and Respondent placed on probation for 24 months from September 28, 2004.	

<b>GOWAN, BOB J., JR. #36737 Cape Girardeau, MO</b>	Default Disbarment on 1/14/04
Information with Notice of Default filed January 14, 2004. Default disbarment by order of the Court on January 14, 2004.	

<b>GREENE, DOUGLAS W., III #24373 Willard, MO</b>	Suspended on 10/26/04 Suspension Stayed/Probation on 10/26/04
Record, DHP Decision and Stipulation of Concurrence filed October 12, 2004.	
Suspended for six months on October 26, 2004; suspension stayed and Respondent placed on probation for six months from October 26, 2004.	

NAME	DISPOSITION
<b>HAHN, JAMES W., #31728</b> Cape Girardeau, MO	Matter Remanded to Chief Disciplinary Counsel on 9/20/04 Following Motion to Set Aside
Joint Motion for Leave to file Stipulation directly with Supreme Court and Submit without further process; Joint Stipulation of Facts; Joint Proposed Conclusions of Law & Joint Recommended Discipline filed on June 3, 2004. On September 15, 2004, Informant's Motion to Set Aside the Joint Stipulation of Facts; Joint Proposed Conclusions of Law and Joint Recommended Discipline filed with the Court.	
On September 20, 2004, the Court rejected the Joint Stipulation and the matter was remanded to the Chief Disciplinary Counsel for appropriate action under Rule 5.	

<b>HAMBRICK, J. C., JR. #28165</b> Branson, MO	Suspended on 12/21/04
DHP Decision and Record filed on May 17, 2004. Matter was briefed and set for oral argument.	
Suspended by order of the Court and no petition for reinstatement shall be entertained by the Court for a period of six months from December 21, 2004.	

<b>HAMPE, ROBERT A. #21149</b> Coffeyville, TX	Disbarment on 9/21/04
Rule 5.20-Information & Motion for Discipline filed on May 24, 2004. (Reciprocal-Wyoming).	
Reciprocal disbarment by order of the Court on September 21, 2004.	

NAME	DISPOSITION
<b>HOLLIDAY, HAROLD L, JR. #20356</b> Kansas City, MO	Public Reprimand on 9/9/04
Joint Stipulation of Facts and Joint Recommended Discipline with Conditions filed on March 1, 2004. Briefed and argued. Public Reprimand by order of the Court on September 9, 2004.	

<b>IRVIN, JOHN R. #20319</b> Butler, MO	Public Reprimand on 12/21/04
Stipulation as to Facts; Conclusions of Law and Recommendation as to Discipline filed on November 9, 2004. Public Reprimand by order of the Court on December 21, 2004.	

<b>JACO, WENDELL GEARY #26009</b> Kansas City, MO	Default Disbarment on 8/11/04 Disbarment Set Aside 8/20/04
Information with Notice of Default filed August 11, 2004. Respondent's Motion to Set Aside Order of Disbarment filed on August 18, 2004. Informant's Non-Opposition to Motions filed.	
Order of disbarment issued on August 11, 2004, set aside. Respondent granted until September 20, 2004, to file an answer with the Advisory Committee. (Voluntary Surrender of License on May 16, 2005.)	

<b>KAISER, CHARLES B. III, #34406</b> Chesterfield, MO	Suspended on 11/23/04
Rule 5.21-Information and Motion for Discipline filed September 16, 2004. Suspended by order of the Court on November 23, 2004, and no petition for reinstatement shall be entertained prior to August 26, 2005.	

NAME	DISPOSITION
<b>KALUDIS, STEPHAN G. #38026</b> St. Louis, MO	Interim Suspension on 8/31/04
Rule 5.24-Information for Interim Suspension filed August 26, 2004. Interim suspension by order of the Court on August 31, 2004. Said suspension shall remain in place until further order of the Court and a trustee ordered appointed.	

<b>KELLOGG, KIMBERLY #35614</b> Overland Park, KS	Disbarred on 6/22/04
Rule 5.21(c)-Information and Motion for Discipline filed June 14, 2004. Respondent was found guilty in Kansas of a felony. Disbarred by order of the Court on June 22, 2004.	

<b>KOEHLER, RICHARD A. #25354</b> Butler, MO	Suspended on 3/30/04 Suspension Stayed/Probation on 3/30/04
Joint Stipulation of Facts, Conclusions of Law and Motion to submit without process filed on August 21, 2003. Matter was briefed and set for oral argument. Suspended by order of the Court on March 30, 2004, through March 31, 2005.	
Suspension stayed and respondent placed on probation ending March 31, 2005, with conditions stated.	

<b>LANDIS, JOHN C. #19304</b> New Castle, DE	Disbarred on 7/22/04
Rule 5.20-Information and Motion for Discipline filed on June 17, 2004. (Reciprocal-Delaware). Disbarred by order of the Court on July 22, 2004, and no petition for reinstatement shall be entertained by the Court prior to Respondent's reinstatement to practice law in the State of Delaware.	

NAME	DISPOSITION
<b>LEVIN, STEPHEN A. #31853</b> Ellisville, MO	Interim Suspension on 7/23/04
Rule 5.24-Information for Interim Suspension and Appointment of Trustee filed on July 21, 2004. Interim suspension on July 23, 2004; suspension to remain in place until further order of the Court. Trustee appointed.	

<b>MCCLURE, LAWRENCE R. #24016</b> Marshall, MO	SC#86232-Default Disbarment on 8/17/04
DHP Decision and Record filed on August 5, 2004. Information with Notice of Default filed on August 17, 2004. Default disbarment by order of the Court on August 17, 2004.	
Motion to dismiss pending matter (SC#86186) as moot, granted on December 9, 2004, subject to re-filing should Respondent's license be reinstated.	

<b>MASTERS, DAVID A. #31992</b> Macon, MO	Interim Suspension on 1/27/04
Rule 5.24-Information for Interim Suspension for threat of harm and motion for appointment of Trustee filed on January 26, 2004. Interim suspension by order of the Court on January 27, 2004, pending the final disposition of disciplinary proceedings, and Trustee appointed with authorization for OCDC to appoint a co-trustee to assist appointed trustee.	

NAME	DISPOSITION
<b>MERTZ, DENNIS B., #21590</b> St. Louis, MO	Public Reprimand on 8/24/04
	Stipulation as to Facts and Joint Recommendation as to Sanctions and Approval of Joint Stipulation and Recommendation as to Discipline filed on July 14, 2004. Public Reprimand by order of the Court on August 24, 2004.
<b>POINDEXTER-SCOTT, FREDRICKA #44652</b> Kansas City, MO	Stipulation Denied 4/27/04 Stipulation of Concurrence rejected on 9/28/04
	Joint Stipulation as to discipline and recommendation filed on March 30, 2004. Joint Stipulation as to discipline and recommendation to the Supreme Court denied without prejudice on April 27, 2004. Stipulation of Concurrence, Information, Answer and DHP decision filed on August 20, 2004. Stipulation of Concurrence rejected without prejudice on September 28, 2004.
<b>PORZENSKI, JOSEPH J. #42754</b> St. Charles, MO	Proposed Discipline Rejected 1/27/04
	Motion to file Information & Stipulation directly & to Submit without further Process filed December 30, 2003. Proposed discipline rejected by Supreme Court on January 27, 2004, and case is being processed pursuant to Rule 5.
<b>PYLE, THOMAS F. #32232</b> Stockton, MO	Public Reprimand on 9/28/04
	Record and DHP Decision filed on October 27, 2003. Informant's brief filed November 24, 2003 and Respondent's brief filed December 17, 2003. Public Reprimand by order of the Court on September 28, 2004.
<b>RADETIC, EDWARD P., #44663</b> Cape Girardeau, MO	Public Reprimand on 5/24/04
	Joint Stipulation of Facts, Joint Proposed Conclusions of Law and Joint Recommended discipline filed on May 21, 2004. Public Reprimand by order of the Court on May 24, 2004.

NAME	DISCIPLINE
<b>RICHEY, MICHAEL L. #24044</b> Cape Girardeau, MO	Surrendered License Disbarred 10/26/04
Voluntary surrender of license filed on September 1, 2004. Surrender of license accepted and Respondent disbarred by order of the Court on October 26, 2004.	
<b>SAYRE, JEFFREY DON #39327</b> Milan, MO	Surrendered License Disbarred 1/28/04
Voluntary Surrender of license filed in Supreme Court on December 9, 2003. Surrender of license accepted by the Court and Respondent disbarred by order of the Court on January 28, 2004.)	
<b>SHELHORSE, JOHN C., IV #46744</b> St. Louis, MO	Public Reprimand on 11/15/04
DHP Decision and Record filed on May 10, 2004. Matter was briefed and set for oral argument on October 7, 2004. Public Reprimand by order of the Court on November 15, 2004.	
<b>SIMMONS, CHRISTIAN W., #50490</b> Kent, WA	Default Disbarment on 8/11/04
Information with Notice of Default filed on August 11, 2004. Default disbarment by order of the Court on August 11, 2004.	
<b>SUTTON, LEON M. #50525</b> St. Louis, MO.	Suspended on 5/21/04
Rule 5.24-Information for Interim Suspension for threat of harm filed on May 17, 2004. Interim suspension by order of the Court on May 21, 2004, pending the final disposition of disciplinary proceedings. Informant filed Motion for appointment of co-trustees on May 28, 2004. By order of the Court on June 8, 2004, co-trustees were appointed to perform the functions set forth in Informant's Motion for appointment of co-trustees.	

NAME	DISPOSITION
<b>TARANTINO, FRANK P. #49939</b> Lawrence, KS	Default Disbarment on 6/29/04
Information with Notice of Default filed on June 29, 2004. Default disbarment by order of the Court on June 29, 2004.	

<b>TAYLOR, JAMES EDWARD #25554</b> Windsor, MO	Surrendered License Disbarred on 1/27/04
Voluntary Surrender of license filed in Supreme Court on October 24, 2003. Surrender of license accepted by the Court and Respondent disbarred on January 27, 2004.	

<b>TAYLOR, SCOTT G. #42820</b> Ozark, MO	Surrendered License Disbarred on 1/12/04
Voluntary Surrender of license filed in Supreme Court on November 25, 2003. Surrender of license accepted by the Court and Respondent disbarred on January 12, 2004.	

<b>VAN METER, GEORGE E. #19233</b> Bakersfield, CA	Disbarred on 8/4/04
Rule 5.21-Information & Motion for Discipline filed in Supreme Court on July 29, 2004. Disbarred by order of the Court on August 4, 2004.	

<b>VICTOR, J. R. #12887</b> Springfield, MO	Public Reprimand on 10/26/04
Stipulation as to Facts, Conclusions of Law & Decision of DHP filed on May 5, 2004. Matter was briefed and set for oral argument on October 6, 2004. Public Reprimand by order of the Court on October 26, 2004.	

NAME	DISPOSITION
<b>WALTON, ELBERT A., JR. #24547</b> St. Louis, MO	Public Reprimand on 12/21/04
DHP Decision and Record filed on July 16, 2004. Matter was briefed and set for oral argument on December 9, 2004.	
Public Reprimand by order of the Court on December 21, 2004.	

<b>WATKINS, ALBERT S. #34553</b> St. Louis, MO	Public Reprimand on 8/23/04
Stipulation, Decision & Recommendation of DHP filed on August 12, 2004.	
Public Reprimand by order of the Court on August 23, 2004.	

<b>WILES, STANLEY L. #21807</b> Kansas City, MO	Suspension on 6/17/03 Suspension Stayed/Probation on 6/17/03 Probation Continued to 6/30/06
Rule 5.20 Information for Show Cause & Motion for Discipline filed on December 18, 2002, (Reciprocal-Kansas). Suspended indefinitely with leave to apply for reinstatement after six months; suspension stayed for one year and Respondent placed on probation pursuant to conditions by order of the Court on June 17, 2003.	
Motion to Terminate Probation filed on January 12, 2004 by Respondent and on January 16, 2004, Respondent's Motion to Terminate Probation overruled and Motion for Order to Show Cause why Probation Should not be Revoked filed March 18, 2004. On May 25, 2004, the Court ordered probation to continue until June 30, 2006, subject to conditions set forth in previous opinion of June 17, 2003.	

**II.**

**PENDING COURT MATTERS  
AS OF 12-31-04**

<b>NAME</b>	<b>DISPOSITION</b>
<b>BERNDSEN, THOMAS G. #32726</b> St. Louis, MO	Dismissed 3/1/05 No Violation Found
DHP Decision and Record filed on October 7, 2004. Informant's brief filed November 24, 2004, and Respondent's reply brief due January 13, 2005. Pending before the Court on December 31, 2004. (Information dismissed by Court on March 1, 2005)	
<b>CREWS, JAMES F. #18276</b> Tipton, MO	Suspended 4/21/05
DHP Decision and Record filed on August 13, 2004. Informant's brief filed December 29, 2004. Respondent's brief due in February, 2005. Pending before the Court on December 31, 2005. (Opinion issued by Court on April 5, 2005-Suspended on April 21, 2005, with leave to apply for reinstatement in one year.)	
<b>FLETCHER, MICHAEL R. #47495</b> Kansas City, MO	Pending 12/31/04
Rule 5.20 Information & Motion for Discipline filed in Supreme Court on July 1, 2004 (Discipline by US District Court for the Western District of MO). Pending before the Court on December 31, 2004.	
<b>HARDGE-HARRIS, PEGGY #25106</b> St. Louis, MO	Suspended 4/26/05
DHP Decision and Record filed on October 29, 2004. Matter to be briefed and argued. Pending before the Court on December 31, 2004. (Suspended with no application for reinstatement for twelve months from April 26, 2005.)	

NAME	DISPOSITION
<b>LANDMAN, NATHANIEL M. #38514</b> St. Peters/St. Charles, MO	Disbarred 4/26/05
DHP Decision, Joint Stipulation & Stipulation of Concurrence filed on September 24, 2004. Matter to be briefed and argued. Pending before the Court on December 31, 2004. (Disbarred April 26, 2005.)	

<b>PRATT, LAWRENCE L. #41324</b> St. Louis, MO	Public Reprimand 5/31/05
DHP Decision and Stipulation of Concurrence filed on August 13, 2004. Matter ordered briefed and argued. Pending before the Court on December 31, 2004. (Public Reprimand ordered by Court on May 31, 2005.)	

<b>SCHWETYE, FREDERICK H. #23498</b> Columbia, MO	Suspended 1/25/05
Motion to Submit Joint Stipulation of Facts & Joint Recommended Discipline with DHP Decision & Recommendation filed on December 17, 2004. Pending before the Court on December 31, 2004. (Interim suspension issued in Case #SC84578 dissolved and Respondent suspended from the practice of law and no petition for reinstatement shall be entertained for a period of eighteen (18) months from January 25, 2005.)	

<b>SIEDBAND, ISABEL #53975</b> St. Louis, MO	Pending 12/31/04
Joint Stipulation of Facts and Motion to Submit without further process filed on November 30, 2004. Matter to be briefed and argued. Pending before the Court on December 31, 2004.	

NAME	DISPOSITION
<b>SMITH, GRANT W. #34720</b> Jefferson City, MO	Suspended on 1/25/05/Suspension to be Stayed on 7/25/05 and Placed on Probation
Joint Motion to Accept Stipulation of the Parties in lieu of conclusions of DHP decision filed with complete Record on August 5, 2004. Pending before the Court on December 31, 2004. (Suspended on January 25, 2005, with leave to apply for reinstatement not earlier than January 25, 2007. Suspension stayed beginning July 25, 2005, and placed on probation with conditions.)	
<b>WILLIAMS, DERRICK #53416</b> Jackson, MO	Suspended on 5/31/05 Suspension Stayed-Placed on Probation until 5/31/07
DHP Decision and Record filed on November 24, 2004. Matter to be briefed and argued. Pending before the Court on December 31, 2004. (Suspended on May 31, 2005; suspension stayed and placed on probation until May 31, 2007.)	

### III. REINSTATEMENT PROCEEDINGS

#### DISCIPLINARY MATTERS

At the beginning of the year, ten (10) Missouri lawyers who had previously been disciplined had applications for reinstatement pending for processing by the Chief Disciplinary Counsel. During the year eleven (11) additional applications for reinstatement were filed and referred to the Chief Disciplinary Counsel for processing. A total of twenty-one (21) disciplinary reinstatement applications were handled by OCDC during the 2004 year.

The status of those **21** applications is as follows:

Reinstated	<b>5</b>
Denied	<b>2</b>
Dismissed	<b>3</b>
Pending with OCDC	<b>11</b>

**A. Five Disciplined Petitioners Were Reinstated By  
The Supreme Court**

- 1) John J. Carey, St. Louis, MO, Missouri Bar #36918, reinstated on April 26, 2004. Petitioner was indefinitely suspended with leave to apply for reinstatement no sooner than one year from November 26, 2002.
- 2) Joseph P. Danis, St. Louis, MO, Missouri Bar #42989, reinstated on April 26, 2004. Petitioner was indefinitely suspended with leave to apply for reinstatement no sooner than one year from November 26, 2002.
- 3) James P. Robinson, St. Louis, MO, Missouri Bar #32502, reinstated on May 25, 2004. Petitioner surrendered license and was disbarred on November 26, 1986.
- 4) Christopher S. Swiecicki, St. Louis, MO, Missouri Bar #38402, reinstated on September 28, 2004. Petitioner was indefinitely suspended with leave to apply for reinstatement after two years from March 25, 1997.
- 5) Eddie Collins Hunter, II, Kansas City, MO, Missouri Bar #47463, reinstated on November 4, 2004. Petitioner was suspended with leave to apply for reinstatement no sooner than 90 days from September 24, 2002.

**B. Two Disciplined Petitioners Were Denied Reinstatement By  
The Supreme Court**

- 1) John W. Zimmerman, Missouri Bar #31720, denied reinstatement. Petitioner granted leave to file petition for reinstatement one year from September 28, 2004, without the necessity of taking the Bar exam or the MPRE prior to filing said petition for reinstatement. Petitioner filed a medical surrender and was disbarred on June 30, 1994.
- 2) John Lyng, Missouri Bar #22365, denied reinstatement. Petitioner surrendered license and was disbarred on June 29, 1993.

### **C. Three Petitions Were Dismissed By The Supreme Court**

- 1) C. William Portell, Jr., Missouri Bar #20956, withdrew reinstatement petition and petition dismissed on May 13, 2004.
- 2) Marshall G. Shain, Jr., Missouri Bar #24745, withdrew reinstatement petition and petition dismissed on September 7, 2004.
- 3) Nathaniel M. Landman, Missouri Bar #38514, withdrew reinstatement petition and petition dismissed on November 1, 2004.

### **NON-DISCIPLINARY REINSTATEMENTS**

The OCDC Jefferson City staff also handle investigations and reports to the Supreme Court on petitions for reinstatement by those attorneys suspended for non-payment of enrollment fees (Rule 6.01). The OCDC also processes applications of attorneys on inactive status requesting to be returned to active status (Rule 6.06). In 2004, the OCDC received seven (7) petitions per Rule 6.01 and thirteen (13) petitions per Rule 6.06, for a total of twenty (20) non-discipline reinstatement files.

### **A. Five Applicants Were Reinstated After Automatic Suspension For Non-payment of Enrollment Fees, Rule 6.01(f)**

At the beginning of 2004, five (5) applications were pending before the Chief Disciplinary Counsel's office from the previous year for reinstatement based on nonpayment of enrollment fees for a period in excess of three years. Seven (7) lawyers filed applications for reinstatement after automatic suspension under Rule 6.01(f) during the year 2004 and said applications were referred to the Chief Disciplinary Counsel's office. Recommendations were made and reinstatements granted on five (5) of those applications. One (1) petitioner withdrew and the matter was dismissed; and six (6) applications were still pending investigation in the Chief Disciplinary Counsel's office at the end of 2004.

## **B. Twelve Applicants Were Reinstated To Active Status, Rule 6.06**

At the beginning of 2004, one (1) application was pending before the Chief Disciplinary Counsel's office from the previous year by an attorney requesting a return to active status. During 2004, thirteen (13) lawyers who had previously requested inactive status filed applications for reinstatement under Rule 6.06 and these applications were referred to the Chief Disciplinary Counsel's office. Recommendations were made by OCDC and reinstatements granted on twelve (12) applications. Two (2) applications remained pending investigation in the Chief Disciplinary Counsel's office at the end of 2004.

## **IV. COMPLAINTS RECEIVED AND ACTED UPON IN 2004**

In 2004, a total of **2,493** letters of complaint were received by the Office of Chief Disciplinary Counsel regarding alleged misconduct of attorneys in the state of Missouri. Of the total complaint letters, 915 formal investigation files were opened and 118 were placed in the Informal Resolution Program, for a total of 1,033.

The office took action on those complaint letters as follows:

Of those **1,033** files:

- 529** Investigation files were sent to regions
- 386** Investigation files were assigned to the Office of Chief Disciplinary Counsel
- 118** Complaint files were placed in the Informal Resolution Program of OCDC

Of the **1,460** remaining complaints:

- 1,011** Investigations not opened
- 271** Insufficient information to proceed
- 84** Referred to Fee Dispute Committees
- 68** Referred to Complaint Resolution Committee
- 26** Placed in "Inquiry" status

The office received and responded to one thousand eleven (1,011) **letters** where the office concluded that an investigation was not warranted or was not appropriate at that juncture.<sup>1</sup> In addition, twenty six (26) files were placed in “Inquiry” status for monitoring whether an investigation should be opened in the future. Of those matters in which the office determined not to open an investigation, the Chief Disciplinary Counsel received approximately two hundred forty-seven (247) letters requesting a review of the staff decision not to investigate their initial complaint. These complainants were provided a further review and response regarding the decision not to investigate through our internal review process. In twenty-three (23) instances, the Chief Disciplinary Counsel determined to take further action on the matter by opening an investigation or gathering additional information in order to make a determination whether to open an investigation.

## **V. DISCIPLINE ACTION INITIATED**

### **A. Admonitions**

The Office of Chief Disciplinary Counsel administered twelve (12) written admonitions and the Regional Disciplinary Committees administered sixty-one (61) written admonitions which were accepted by members of the Missouri Bar. A total of seventy-three (73) admonitions were administered. In addition, one hundred two (102) cautionary letters were sent to lawyers by OCDC and the committees at the conclusion of the investigations. Cautionary letters are not disciplinary action, but merely a caution to the attorney that their conduct may have constituted a violation of the rules or could lead to a future finding of a violation of the rules. These letters are used to educate the attorney on ethical responsibilities in cases where the state of the law or the facts may not be clear or to alert the attorney that a particular course of conduct, if unchecked in the future, may cause additional complaints to be filed.

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<sup>1</sup> In certain instances, OCDC determines not to open a complaint until after litigation is completed.

## B. Investigation Summary

Region	Investigations Pending 1/1/04	Investigations Referred 2004	Investigations Disposed in 2004
IV	139	228	187
X	134	195	176
XI	130	106	134
OCDC	279	504*	297**

\* Includes Informal Resolution

\*\* Includes those Informal Resolutions disposed of by OCDC

Region	Admonitions Issued in 2004	Cautionary Letters Issued in 2004
IV	39	28
X	17	16
XI	5	2
OCDC	12	56

## C. Filed Hearing Matters

### FILING INFORMATIONS

In 2004, due to the combined efforts of OCDC and the Regional Disciplinary Committees, Informations (the formal charging document before a disciplinary hearing panel) were filed on one hundred sixteen (116) files. “Files” indicate individual complaints against attorneys. An Information against one attorney may include multiple files. The number of Informations filed before the Advisory Committee was forty (40).

Thirty (30) Informations representing one hundred eighteen (118) complaint files were pending before the Advisory Committee and Disciplinary Hearing Panels at the beginning of 2004. Six (6) Informations resulted in defaults by the respondent, with default Informations being filed directly in the Supreme Court. Hearings were completed before Disciplinary Hearing Panels on twenty-one (21) attorneys involving forty-six (46) files.

#### **D. Informant's Briefs, Replies And Oral Arguments**

Eight Informant's briefs were filed in the Supreme Court in 2004.<sup>2</sup> Of those eight, two were briefed because OCDC did not concur in a DHP's recommended sanction, three were briefed because the Respondent did not concur in a DHP's recommended sanction, one was briefed because neither OCDC nor the Respondent concurred in the DHP's recommended sanction, and two were cases the Court ordered briefed after the parties filed a joint stipulation and joint recommendation for sanction. One reply brief was filed. Eight disciplinary cases appeared on the Court's oral argument calendar in 2004. The Court published one disciplinary opinion in 2004: *In re Shelhorse*, 147 S.W.3d 79 (Mo. banc 2004).

#### **E. Cases Filed In The Supreme Court Pursuant To Rule 5**

##### **RULE 5.20**

Four cases based on discipline administered in another jurisdiction (reciprocals) were filed in 2004: *In re Dyer*, SC86041, *In re Hampe*, SC86019, *In re Fletcher*, SC86090, and *In re Landis*, SC86064.

##### **RULE 5.21**

Likewise, four informations were filed advising the Court that lawyers had pled guilty, been found guilty, or pled nolo contendere to violations of criminal laws: *In re Kaiser*, SC86308, *In re Kellogg*, SC86048, *In re Coan*, SC86373, and *In re Van Meter*, SC86164.

##### **RULE 5.24**

Five informations requesting interim suspensions for threat of harm were filed in 2004: *In re Masters*, SC85787, *In re Sutton*, SC86004, *In re Levin*, SC86131, *In re Kaludis*, SC86258, and *In re Devkota*, SC86499. The Court ordered interim suspensions in all five cases.

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<sup>2</sup> *In re Holliday*, SC85857, *In re Shelhorse*, SC85977, *In re Hambrick*, SC86005, *In re Victor*, SC85972, *In re Walton*, SC86122, *In re Smith*, SC86187, *In re Crews*, SC86212, *In re Berndsen*, SC86342

## **RULE 5.25**

Five report and recommendations on surrender applications were prepared and filed in 2004: *In re Cato*, SC85692, *In re Sayre*, SC85720, *In re Cushman*, SC86119, *In re Richey*, SC86275, and *In re Emmons*, SC86248.

### **ADVISORY COMMITTEE REVIEW**

During 2004, at the conclusion of an investigation when no probable cause was found, complainants requested Advisory Committee review on seventy-six (76) complaint files. Thirty-two (32) of those review files were pending with the Committee at the end of the year. The Advisory Committee upheld the closure on thirty-three (33) of these review files and issued five (5) cautionary letters that were sent to lawyers at the conclusion of their review. The Advisory Committee assigned six (6) files for further investigation.

#### **A. Informal Resolutions Of Complaints Without Opening Formal Investigation**

In August 2001, the Office of Chief Disciplinary Counsel initiated a new program in an attempt to address a concern and suggestion made by the ABA team that made recommendations to the Supreme Court in February 2001 regarding the Missouri attorney discipline system. One recommendation (Recommendation #4) was to implement a complaint hotline which would provide a toll-free number for complainants to report a complaint. The recommendation also addressed a concern that the system be more “consumer friendly” in assisting complainants with expressing their complaints and to resolve matters where possible at the intake-screening stage.

In response to that concern, the “Informal Resolution Program” was implemented and enjoyed great success in 2001. In 2002, the program was instituted as a permanent method of complaint resolution. In this program, intake counsel identifies appropriate cases which are then assigned to a paralegal with directions to contact the complainant, the respondent, or both, to assist in resolving the complaint rather than proceeding with a formal investigation. This is most often in response to a complaint that the client has not had adequate communication from the lawyer or where the client is attempting to obtain file documents without success. It may also be used in a case where the complainant has trouble articulating the nature

of the complaint, or seems confused about the lawyer's responsibilities or the legal process. The Office of Chief Disciplinary Counsel believes the program will continue to be very successful in reducing processing time as well as preserving the attorney/client relationship.

In 2004, one hundred and eighteen (118) complaints were handled through the Informal Resolution Program. Of the one hundred and eighteen (118) complaints, ninety one (91) were resolved without resorting to opening a disciplinary investigation, fourteen (14) were unresolved and an investigation file was opened, ten (10) were closed, and three (3) were pending as of December 31, 2004. Processing time on these complaints averaged thirteen (13) days.

## **B. Missouri Bar Complaint Resolution/Fee Disputes**

The Chief Disciplinary Counsel referred sixty-eight (68) complaints to the Missouri Bar Complaint Resolution Program for resolution outside of the disciplinary process in accordance with Rule 5.10. The report of the Complaint Resolution Program on the results of their efforts to resolve those complaints is attached and made a part of this annual report.

During the year, eighty-four (84) complainants were referred to Fee Dispute Committees.

The Missouri Bar, Kansas City Metropolitan Bar Association and the Bar Association of Metropolitan St. Louis continued to provide assistance to the discipline process in the form of the fee dispute resolution programs. These programs are valuable to the lawyers of the state and legal consumers by providing a forum for complaints which are primarily fee-oriented, to be addressed through non-disciplinary means. The Regional Disciplinary Committees, the Office of Chief Disciplinary Counsel and the Advisory Committee are grateful to the bar associations for their cooperation and assistance in the Fee Dispute and Complaint Resolution Programs.

## **VI. UNAUTHORIZED PRACTICE OF LAW**

The Office of Chief Disciplinary Counsel opened complaint files on approximately fifty-one (51) individuals and organizations alleged to have engaged in the unlawful practice of law.

Some of these cases were referred to local prosecuting attorneys or to the Consumer Protection Division of the Missouri Attorney General's office. Others were resolved through communication with the company or individual.

In 2004, the office devoted more attention to investigating unauthorized practice of law complaints. However, the office remained understaffed to handle the volume of complaints in this area and was forced to devote its limited resources to conducting in-depth investigations only when there appeared to be widespread consumer fraud occurring. After the office conducted in-depth investigations of complaints and where appropriate, the office referred the materials to law enforcement for criminal prosecution as OCDC is only authorized to seek a civil injunction against a party for engaging in the unauthorized practice of law.

To be effective in this area the office staff attorneys suggest the revision of certain Rules and Statutes and additional staff be assigned to this function.

## **VII. PRESENTATIONS BY OCDC STAFF**

During 2004, OCDC staff gave presentations at 45 Continuing Legal Education seminars, organizations and other programs. More specifically, the OCDC staff gave presentations to the following groups: the Bankruptcy Courts of the Eastern and Western Districts of Missouri; BAMS; the Disciplinary Hearing Panel members; the Estate & Trust Institute; the Judge Advocate General; the Judicial Ethics and Campaigning Panel; the Lawyers' Association of Kansas City; the Mid-MO Paralegal Association; the MO Association of Criminal Defense Lawyers; the MO Circuit Clerks; the MO Deputy Sheriff's Association; the MO Municipal Attorneys Association; the MO Paralegal Association; the Springfield Metropolitan Bar Association; the St. Charles Bar Association; the St. Louis City Counselor's Office; the University of MO-Columbia Professionalism Class; and the U.S. Bankruptcy Trustees office. The OCDC staff also were speakers at the MO Bar Annual Meeting, the Solo and Small Firm Conference, and many other CLE presentations.

## **VIII. SIGNIFICANT ACTIVITIES IN 2004**

### **Annual Training Of Regional Disciplinary Committees And Special Representatives.**

The disciplinary system in Missouri utilizes volunteers in the two large metropolitan areas to investigate cases. The remainder of the cases from other parts of the state are investigated by the OCDC staff in Jefferson City. In 2004, there were sixty-eight (68) active volunteers acting in the capacity of Regional Disciplinary Committee members in the Kansas City and St. Louis areas. Fifty (50) of those members were lawyers and eighteen (18) were non-lawyers. The regional disciplinary committees are divided into ten (10) divisions – three in Kansas City, three in St. Louis City and four in St. Louis County. The committees are assisted by attorneys (Special Representatives of OCDC) who are paid on an annual basis by the OCDC to help the committees on a part-time basis. The eleven (11) Special Representatives, (ten (10) as of August, 2004 after a resignation) are also otherwise employed in the practice of law. These attorneys also act as trial counsel at disciplinary hearings if formal charges are filed, once they are so designated by the Chief Disciplinary Counsel.

On November 5, 2004, a full day training session conducted by OCDC was held in Columbia for members of the ten (10) divisions of the active Regional Disciplinary Committees from across the state. Three individuals from the Southern Missouri area who ultimately accepted volunteer positions on a committee which began in 2005 were also able to join the group for the annual training. This was the third annual training session. Nine (9) of the ten (10) Special Representatives who serve the committees were in attendance, and six (6) lay committee members, and nine (9) lawyer committee members, along with eight (8) OCDC staff. At this session, participants were given substantive training materials relating to various policies and practices in the system. The Chairman of the Advisory Committee attended the session and addressed the group. Supreme Court Judge Mary Rhodes Russell addressed the group during the luncheon portion of the meeting. Various Special Representatives, staff attorneys, committee members and the Legal Ethics Counsel presented portions of the training. A special speaker from the Supreme Court Intervention Committee addressed the group on recognizing and dealing with substance abuse problems in lawyers. Lawyer participants received continuing legal education credit for their participation.

### **Other Training Sessions:**

In 2004, OCDC attorney staff participated in training by attending the National Organization of Bar Counsel conferences. Two Special Representatives also participated in some of these sessions.

OCDC became accredited as an MCLE provider in 2003. In 2004, we continued to host CLE presentations for the benefit of volunteers and special representatives. OCDC presented CLE presentations on current issues in the disciplinary system at luncheons honoring the Regional Disciplinary Committee members in Kansas City and St. Louis.

Paralegals in the office attended and presented training through the Missouri Paralegal Association.

A Paralegal-Investigator in the OCDC attended a three day training conference co-hosted by the Organization of Bar Investigators (OBI) and the Colorado Supreme Court Attorney Regulation Counsel's Office. This Paralegal-Investigator was elected as president of this national organization in 2004. This training conference included topics such as Navigating the Complex Disciplinary Case, HIPAA, Interviewing and Interrogation, Professional Conduct for Immigration Practitioners, Avoiding the Unauthorized Practice of Law, Testifying in Disciplinary Proceedings and Computer Forensics. The information provided in these courses has been utilized in daily investigations. Additionally, by attending this conference, this Investigator has expanded the networking function of OBI which has proven useful to this office. Subsequently, OBI was granted associate membership with the National Organization of Bar Counsel.

Additionally, this Paralegal-Investigator attended specialized training on Investigating by Computer hosted by the Association of Certified Fraud Examiners of which our office recently became an associate member. This training was utilized frequently throughout the course of the year to expand our ability to locate individuals and gather information using the internet and reducing costs by avoiding unnecessary travel. The ACFE also hosted a training course on Analyzing Written Statements and Investigative Discourse Analysis.

The Chief Disciplinary Counsel attended a three day national event training session on Risk Management, as applied to various aspects of business and non-profit organization management, including Capital Improvement Project Management; Safety Issues; Volunteer Oversight and

Screening; Insurance Basics; Crisis Communication and Public Relations; Continuity of Business Plans; Financial and Internal Controls; Personnel Issues, etc.

### **Expanded Advisory Committee:**

In 2004, in response to notice that OCDC would be requesting an increase in fees to fund new programs and the costs associated with added staff, the Missouri Bar recommended to the Supreme Court that a separate disciplinary board be established as an oversight body over the OCDC. The Bar leadership proposed that a nine-person body be established with four members being appointed by the Missouri Bar Board of Governors. The Court did not adopt the Bar's suggestion to amend the existing Supreme Court rule setting forth the creation of the Office of the Chief Disciplinary Counsel. In August, 2004, the Supreme Court added three (3) members to the present Supreme Court Advisory Committee (two lawyers and one non-lawyer) and allowed the Bar, the Advisory Committee, and the OCDC to submit names for consideration. In December, 2004, the Court appointed three additional lawyers, deferring the decision on the additional lay person until further information was obtained on the proposed candidates. In early 2005, the additional lay person was appointed.

### **Changes in Rules:**

#### **Probation and Diversion -**

In 2002, the Missouri Supreme Court adopted new rules authorizing diversion and probation programs, effective as of January 1, 2003. During the calendar year 2004, the OCDC monitored 13 diversion agreements and monitored 7 probation orders.

Several of the lawyers, as a condition of probation, utilized the services of a law practice management consultant; some had a mentor attorney; and some received counseling for mental health or substance abuse issues.

#### **Rule 5.28 – Reinstatement -**

On March 30, 2004, the Missouri Supreme Court adopted a new subdivision (h) to Rule 5.28, which became effective April 1, 2004. This new subdivision provides that an attorney who is suspended indefinitely with leave to reapply in a period of six months or less, and is not on

probation, shall be reinstated 30 days after the Application for Reinstatement is referred to the Chief Disciplinary Counsel for a Report and Recommendation. The Chief Disciplinary Counsel may file a Motion to Respond to the Application for Reinstatement within the 30-day period, otherwise, the license shall be reinstated.

### **Rules of Professional Conduct - Rule 4-1.15 – File Retention**

On August 24, 2004, the Missouri Supreme Court amended Rule 4-1.15, with an effective date of January 1, 2005, by adopting a new subdivision (h) authorizing lawyers to destroy client files 10 years after completion or termination of the representation unless the lawyer and the client make other arrangements.

Certain restrictions on the destruction of client files are provided in the Rule.

The Rule does not affect a lawyer's obligation to maintain trust account records as required by subsection (a) of this Rule.

#### **Staff:**

In 2004, the OCDC was authorized to hire a receptionist and that position was filled November 1, 2004.

One special representative in the Kansas City region resigned her position in August, 2004. That position was not filled until 2005.

#### **Physical Facilities:**

The facility in Jefferson City is filled to capacity with staff and file storage. In August, 2004, the Supreme Court authorized OCDC to hire an architect to develop plans for expansion of its building onto an adjoining plat of land which was purchased in 2003 for this purpose. Preliminary plans were begun in late 2004 to accommodate future staff needs in an expanded building. In December 2004, an ad hoc building committee was appointed by the Court to facilitate the project.

Off-site storage has been acquired to store closed files which still must be accessed, since there is no room available at the OCDC office. Other options such as purchasing a compressed filing system, which would

entail altering the type of files used and transferring all materials to new files, or scanning files onto a computer imaging system were explored and experimented with in 2004. Due to the costs involved, lack of staff resources to address the problem, and the pending building expansion project, no final conclusion was reached in 2004 on these issues. The lack of storage remains an issue for OCDC.

The parking lot at OCDC is showing signs of wear and cracking. It may need maintenance work in the near future. This was not undertaken in 2004 since plans for the expansion of the building project were underway. The parking lot presently accommodates fourteen (14) cars and one (1) handicapped space. As of November, 2004, there were 15 staff at the OCDC office, therefore, there are insufficient parking spaces to meet current staff needs. There is no handicapped access to the lower floor of the building aside from driving around the building, over an unpaved area of grass to arrive at a loading room door in the basement. Likewise, action was not taken in 2004 to address these issues, given the plans for building and parking expansion.

### **Case Management/Tracking Data Base:**

Substantial staff efforts were expended in 2004 to research and identify an appropriate case management system that would improve OCDC's ability to access all relevant information on an attorney's history and follow the progress on case files. Such a system is necessary to expedite the processing of new complaints, have current and comprehensive information on all aspects of an attorney's background and status at each stage of evaluation of a complaint file available and accessible in an easy to read format for participants in the disciplinary system (volunteers, special representatives and staff attorneys).

As part of the ABA Recommendations to the Supreme Court in 2001, it was suggested that branch offices be established in Kansas City and St. Louis. Part of the recommendation was to link the Jefferson City office via computer with the branch offices in order to more easily share relevant and developing information on cases. The recommendation for branch offices has not been adopted by the Supreme Court.

The ABA pointed out that regardless of whether branch offices were opened, the special representatives working in other regions of the state should have access to a computer data base established at OCDC to provide current information on respondent attorneys, their histories, and status of

current investigations. Under the present system (which was also in place at the time of the ABA visit), a photocopy of a handwritten list of past discipline investigations and their disposition is provided to the special representatives as the “discipline history” of any respondent attorney they are investigating. During the course of the ongoing investigation, the responsibility is placed on the special representative to determine, at critical points in the evaluation process, whether there is any change in that information or in the status of the attorney with regard to payment of annual licensing fees, continuing education requirements, the imposition of discipline, or new complaints. The special representative must call, write or email for this information which OCDC staff will locate and transmit to the special representative. This causes additional delay in the process; increases the risk that information could change in the interim between obtaining the updated data and the special representative taking action on the information; places the burden on the special representative to timely request the information; and places heavy reliance on the assumption that special representatives will remember to incorporate this step into their case processing at all stages. Failure to do so has resulted in disposition of cases without knowing the most recent developments on a respondent attorney which may have a significant bearing on an appropriate disposition.<sup>3</sup>

A computer data base with limited information on the complaint history of some attorneys was created in 2000. However, this data base is not accessible to the regional committees or the special representatives. In addition, this data base does not include all complaints received on attorneys, and it does not contain all discipline issued against attorneys. That information is obtained by looking at several individual references at the OCDC office. The primary source of information, which has been used as the “official disciplinary record” for each attorney in the state, is contained in a physical file folder. Specific information is written on the cover of the folder, other information is contained as loose documents within the folder. Other sources of disciplinary information are found on a “Word” document on the shared drive of the computer network at OCDC and on an additional data base kept for Admonitions.

In order to obtain current and “official” information on an attorney’s address, status of dues payments, status of continuing legal education

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<sup>3</sup> For example, a determination to dispose of a matter by admonition or cautionary letter may be inappropriate if it was known to the special representative that the respondent attorney had just received several more complaints of the same nature or was continuing to practice law without being current in payment of licensing fees or maintaining compliance with continuing legal education requirements.

(CLE) compliance, or any other official record of the attorney's history, OCDC staff must access the Missouri Bar's data base on an individual basis or call to find out particulars of CLE compliance. Each of these steps add processing time to preparation of complaint files. At critical stages in the evaluation process of any complaint file, these resources must be again reviewed to determine if there has been any change that would alter the recommendation at that point. At any stage at which correspondence is sent to an attorney which has "official" significance, such as a notice to the attorney of responsibility to respond to a complaint or serving a pleading on the attorney, the official data base maintained by the Missouri Bar of current addresses of record must be consulted. For this reason, the staff made it a requirement of any new case management system that integration of the Missouri Bar records be available on a continuous and instantaneous basis.

The computer data base system currently utilized at OCDC is an adaptation of Access software. The system has its limitations and is not user friendly.<sup>4</sup> In fact, most of the attorneys at OCDC do not use the data base because of the difficulty of retrieving information and the fact that it is not the sole source of information that must be accessed in order to get a full view of the complaint history and status of an attorney. Because of this reality, administrative staff spends a considerable amount of time retrieving files, contacting the Bar, or consulting the various data base resources to retrieve all relevant information to compile for the staff attorney's consideration when he or she is reviewing a complaint file.

For all these reasons, it was determined that it was important to replace the existing case management system with a more advanced data base that can handle all the relevant information necessary for evaluation, provide easy, user-friendly access to the information in one location, and incorporate existing official records from the Missouri Bar system into the data base as well as perform additional functions. Once this is accomplished, the proposed "link" between OCDC and the special representatives and regional committees can be undertaken.

In October, 2003, the Supreme Court directed OCDC to identify an appropriate case management system to accomplish these needs. In 2004, substantial efforts were made in this regard, including onsite demonstrations by various vendors, attendance by staff at trade shows

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<sup>4</sup> Because the current case management system is not user-friendly, is difficult for the attorneys to use, and does not contain all relevant information, no steps have been taken to provide a link of the data base to special representatives.

featuring these products, travel to other facilities to observe other systems, etc. In late 2004, a product was identified that OCDC determined would adequately address its needs. A price quotation was received in late 2004 which was transmitted to the Supreme Court.

### **Rules of Professional Conduct “Ethics 2000”:**

In 1997, the American Bar Association developed a committee composed of lawyer representatives across the United States to review and revise the ABA Model Rules of Professional Conduct. After a comprehensive proposal was prepared by this group, individual states formed committees to consider the application of the proposals for their state. Likewise, the Missouri Bar’s committee on the Rules of Professional Conduct did an extensive review and offered comments to the Court with some additional revisions. Their report was received by OCDC in the fall of 2003 and comments were offered by OCDC staff to the Court. Continuing into 2004, additional rule changes were proposed by Missouri Bar Committees in the area of multi-jurisdictional practice and advertising. Staff at OCDC reviewed the proposals as well and offered comments in early 2004 to the Court and the Bar. This was a very time-consuming review process by all involved and great effort was expended by the Bar and OCDC staff, the Legal Ethics Counsel and the Advisory Committee in 2003-2004 on this important project.

The “Ethics 2000” amendments, as revised by the Missouri Bar, were still pending with the Supreme Court on December 31, 2004.

### **Other Committee Work:**

OCDC staff participated in various committees and sub-committees of the Missouri Bar. The Chief Disciplinary Counsel and staff presented materials and spoke before the Missouri Bar Executive and Finance Committees in early 2004 regarding information on its operations and request for a fee increase.

## **Open House:**

On November 19, 2004, the Office of the Chief Disciplinary Counsel hosted an Open House. The Open House was scheduled on the same day as The Missouri Bar's Fall Meeting, in order to boost attendance from bar members from across the state. At the Open House, the Office of Chief Disciplinary Counsel provided tours of our facility and information about the discipline process.

## **IX. STATUS OF THE ABA RECOMMENDATIONS**

In February 2001, the American Bar Association issued a Report on the Lawyer Regulation System in Missouri, at the request of the Supreme Court. The report contained 21 recommendations, many of which encompassed the themes of increased accessibility to the public, standardizing procedures through training and procedural rules, and providing alternatives to discipline in the form of probation or diversion programs.

Other recommendations included removing the ethics opinion function from the Office of Chief Disciplinary Counsel, making disciplinary proceedings public at an earlier stage, increasing efficiency and access by revising the system and opening branch offices in the two major metropolitan areas, requiring disciplined attorneys to reimburse the agency for costs, and requiring lawyers to maintain client trust accounts at banks which would notify the OCDC of overdrafts.

A report was submitted jointly by the Advisory Committee and the Office of Chief Disciplinary Counsel in February, 2002 to the Supreme Court on the ABA recommendations with comments from the Missouri Bar. Many actions were reflected in the annual reports of 2002 and 2003 which were in response to the ABA recommendations.

During the year of 2004, the following actions were taken in response to the ABA's recommendations:

1. A training session was conducted for disciplinary hearing officers by the Legal Ethics Counsel and the Advisory Committee. The Chief Disciplinary Counsel and a special representative presented information at the training session in Columbia, Missouri. (Recommendation 3)

2. The Third Annual Training Meeting was conducted for the volunteers in the Regional Disciplinary Committees and the Special Representatives (attorneys paid by OCDC to assist them) in November, 2004 in Columbia, Missouri. (Recommendation 3)
3. Proposals were sent to the Supreme Court in April and May 2004, on reimbursement for costs by disciplined attorneys and for fees to be assessed in reinstatement matters. (Recommendation 16)
4. Efforts were undertaken to identify and purchase an improved case management system as described above in Section VII, Significant Activities, which could be linked to the St. Louis and Kansas City regional committees and special representatives. (Recommendation 2)
5. The Supreme Court asked the Advisory Committee to perform an increased role in advising the Office of Chief Disciplinary Counsel in December, 2004. (Recommendation 1)
6. Continued public outreach efforts were made through press interviews and articles in legal and other publications to raise awareness of the functions of the office. Staff presentations to paralegal associations, and colleges were made. (Recommendations 4 and 5)
7. An automatic reinstatement process was adopted by the Supreme Court in cases of suspensions for six months or less, Rule 5.28 (h). (Recommendation 13)

## **X. PROGRESS ON BACKLOGGED INVESTIGATIONS**

A common problem for attorney disciplinary agencies across the country is processing cases in a timely manner. Similarly, it was noted in 2002 that the Missouri attorney discipline system had a significant backlog of investigation files, particularly in the category of investigation files pending over 360 days. A major focus of the Chief Disciplinary Counsel in 2003 was to find methods to reduce the number of investigation files pending in this category.

Case processing guidelines were established in 2003 at the direction of the Court. A goal was set that no more than 10% of total investigations be at the over 360 days pending category.

The OCDC staff and the Regional Disciplinary Committees expended extraordinary efforts to reduce this backlog of cases in 2003 and achieved great success. However, in 2004 the number of backlogged cases pending 360 days and over increased.

- On January 1, 2004, the percentage of investigation files in the over 360 day category was 12% of the total investigation (normal)<sup>5</sup> files. As of December 31, 2004, the percentage of investigation files in the over 360 day category was 16% of the total investigation (normal) files.

The case processing guidelines further provide that the majority (80%) of investigations be completed within six months (180 days). According to case management reports, as of December 31, 2004, cases pending in investigation over six months constituted approximately 40% of the total investigation (normal) files.

It is believed this goal has not been met, in part, because the number of complaints received has increased dramatically in recent years:

1999 – 1475 complaints
2000 – 1649 complaints
2001 – 1506 complaints
2002 – 2002 complaints
2003 – 2529 complaints
2004 – 2493 complaints

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<sup>5</sup> The OCDC case management system reports investigations in the categories of “normal”, “held”, and “post AC review”. Normal cases are active pending files which have been processed without interruption. Held files are those temporarily placed in a non-active status because of pending litigation or other factors delaying the active pursuit of the investigation. Post AC files are those which were fully investigated, closed, then returned for further investigation after review by the Advisory Committee because it was believed by the committee that the finding of no probable cause was not appropriate.

## **SUMMARY OF DISCIPLINE ACTIONS**

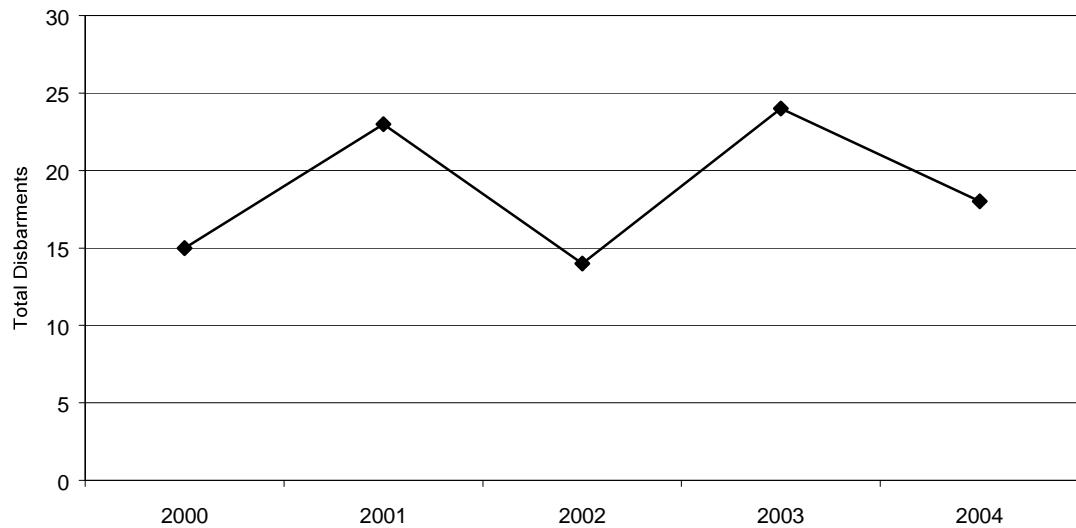
During 2004:

- **18** Eighteen lawyers were disbarred; and one **(1)** of those was set aside by the Court;
- **17** Seventeen lawyers were suspended; and **(7)** of those suspensions were stayed and attorneys placed on probation with conditions;
- **10** Ten lawyers received public reprimands;
- **73** Seventy-three written admonitions were administered by the Regional Disciplinary Committees and the Office of Chief Disciplinary Counsel; and
- **3** Three additional matters were dismissed by the Court as moot or rejected without prejudice to re-filing.

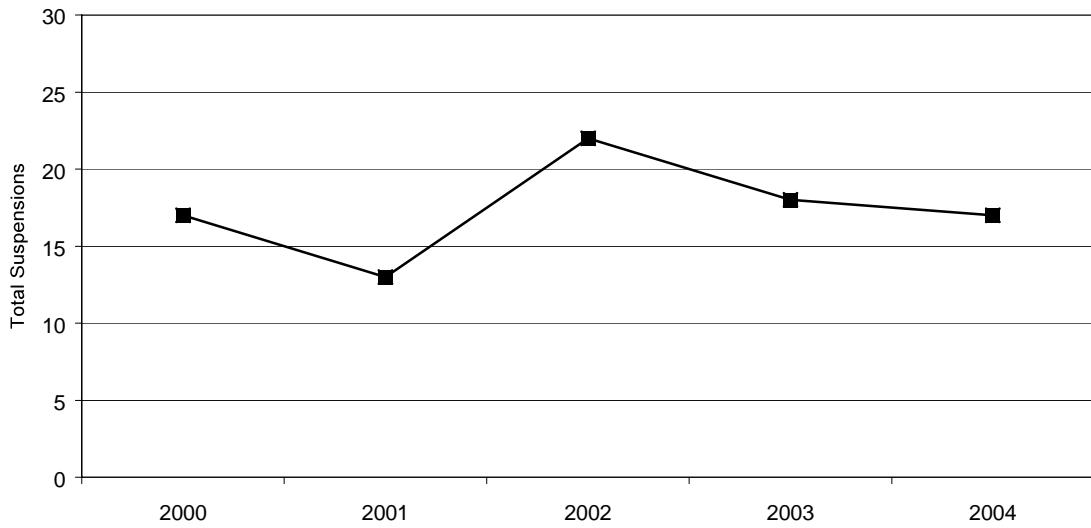
These figures include proceedings by all committees and the Office of Chief Disciplinary Counsel.

In light of the disbarments and suspensions, one hundred thirteen (113) other complaints about the disbarred and suspended attorneys were closed; and additional complaint files that were still in the process may have been closed due to disbarment or suspension of the attorneys.

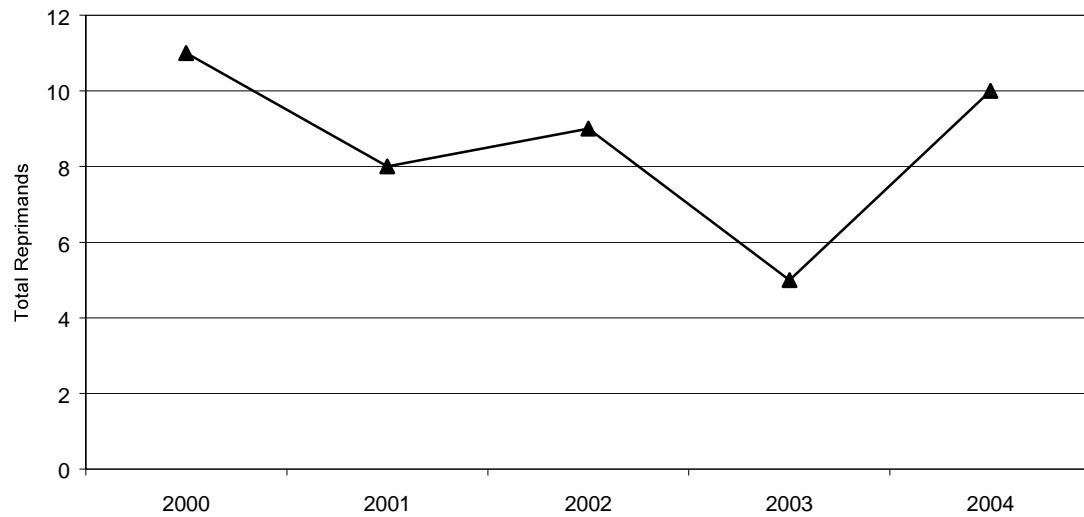
### Disbarments



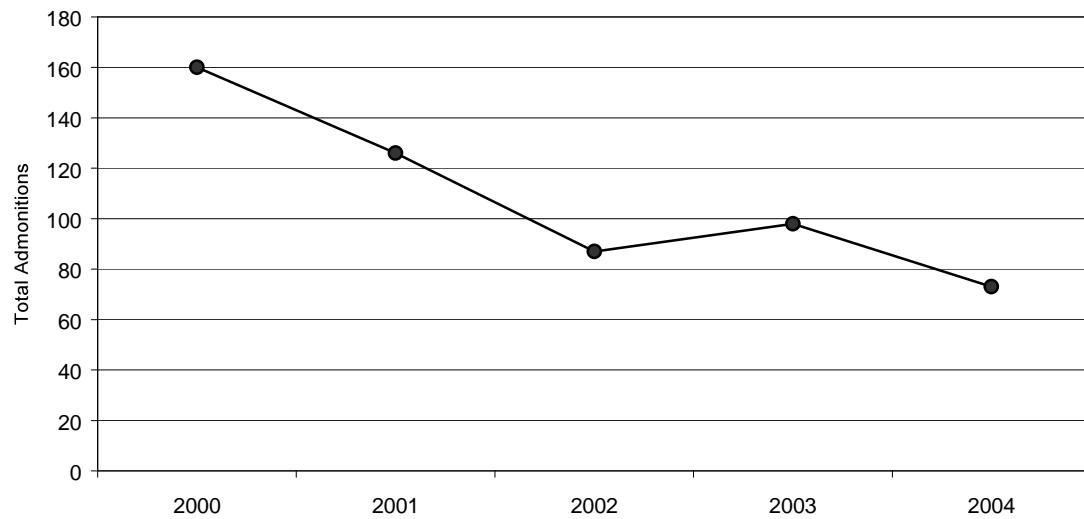
### Suspensions

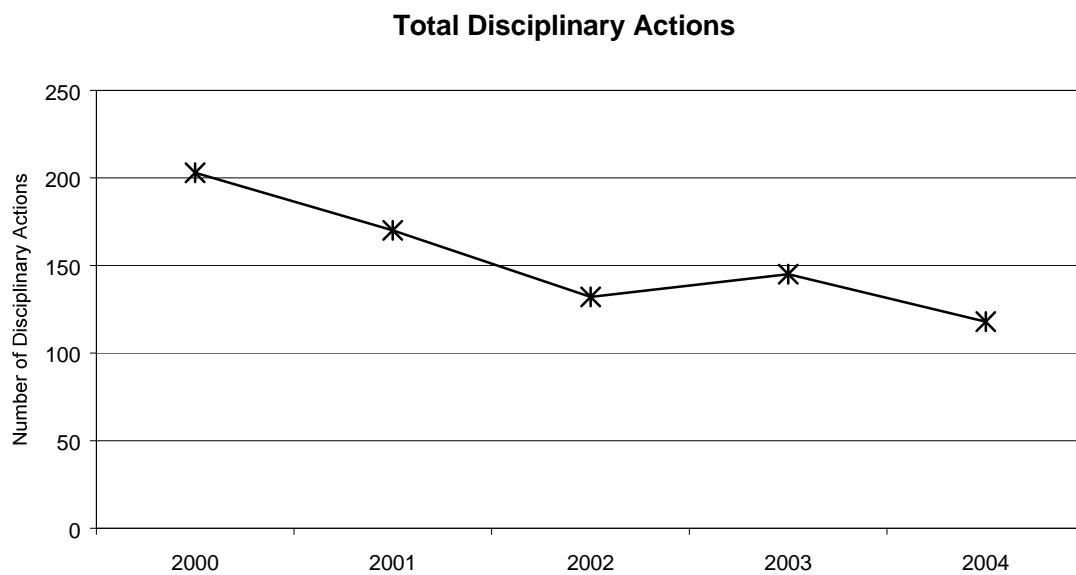


### Reprimands



### Admonitions





*In 2004, there were a total of (121) disciplinary actions including admonitions and formal discipline matters.*

It is believed that the decreased number of total disciplinary actions is a direct result of the decrease in admonitions. In recent years, there have been fewer admonitions issued for repeat offenders. Under current criteria and as a general rule, admonitions are only offered for an isolated instance of misconduct. Chronic offenders are evaluated by different criteria to determine whether remedial programs are warranted or by pursuit of higher levels of discipline. Admonitions have decreased for first-time offenders as well by utilizing educational tools, such as diversion programs or cautionary (educational) letters, in appropriate circumstances.

The total number of complaints opened as formal investigations during 2004 was nine hundred fifteen (915). The most common complaints and the fields of practice most likely to produce complaints are:

<b>NATURE OF VIOLATIONS *</b>	<b>NO.</b>
Rule 1.4 (Communication)	301
Rule 1.3 (Diligence)	253
Rule 8.4(c) (Dishonesty, Fraud, Deceit, Misrepresentation)	64
Rule 1.15 (Safekeeping Property)	56
Rule 1.7 (Conflicts)	54
Rule 5.5 (Unauthorized Practice)	38
Rule 1.1 (Competence)	30
Rule 1.16 (Improper Withdrawal)	28
Rule 7.2 (Advertising)	28
Rule 1.5 (Excessive Fees)	23
Rule 8.4(b) (Criminal Activity)	22
Rule 5.20 (Reciprocal Discipline)	7
Rule 5.3(b) (Supervisory Responsibility)	6
Rule 3.8 (Prosecutorial Responsibility)	6
Rule 1.6 (Confidentiality)	5
Rule 3.3 (Truth to Tribunal)	5
Rule 3.5(b) (Ex Parte Contacts)	4
Rule 8.1(b) (Failure to Cooperate)	4
Rule 3.4 (Obstruction/False Evidence)	4
Rule 4.1 (Truth to 3 <sup>rd</sup> Persons)	2
Rule 8.4(g) (Bias & Prejudice)	1

\* Many complaints included more than one allegation. Some complaints involved more than one area of law practice.

<b>AREA OF PRACTICE *</b>	<b>NO.</b>
Domestic	210
Other	147
Torts	131
Criminal	106
Bankruptcy/Receivership	97
Estate/Probate	36
Litigation	35
Workers Compensation	33
Real Property	29
Traffic	21
Labor Law	19
Immigration/Naturalization	15
Contracts	14
Collections	9
Landlord/Tenant	8
Administrative/Governmental	7
Insurance	7
Patent/Trademark	5
Corporate/Banking	4
Guardianship	3
Environmental	1
Civil Rights	1
Commercial Law	1
Taxation	1
Unemployment Benefits	1
Juvenile	1

\* Many complaints included more than one allegation. Some complaints involved more than one area of law practice.

Dated at the Office of Chief Disciplinary Counsel at Jefferson City, Missouri this 5th day of July, 2005.

Respectfully Submitted,

MARIDEE F. EDWARDS  
Chief Disciplinary Counsel

## **2004 LEGAL ETHICS COUNSEL ANNUAL REPORT**

### **LEGAL ETHICS COUNSEL ROLE**

#### **Informal Advisory Opinions**

Pursuant to Rule 5.30(c), the Legal Ethics Counsel issues non-binding informal advisory opinions.

The Legal Ethics Counsel provided informal advisory opinions in response to 1,452 oral contacts. Some of the contacts involved multiple, separate questions and, therefore, multiple opinions. Opinions given in conjunction with informal contact at bar meetings and CLE programs are not included in this count. Opinions provided at the “Legal Ethics Counsel Booth” at the Solo and Small Firm Conference are included.

The Legal Ethics Counsel also provided 64 written informal advisory opinions. Of these, 18 were summarized and published with the approval of the Advisory Committee.

#### **CLE Presentations**

The Legal Ethics Counsel prepared and gave 28 CLE presentations for various groups, including: The Missouri Bar, Kansas City Metropolitan Bar Association, Lawyers Association of Kansas City, University of Missouri at Kansas City Law School, St. Louis University Law School, Randolph County Bar Association, Pulaski County Bar Association, Boone County Bar Association, Child Support Enforcement Association, National Organization of Bar Counsel, and the Office of Chief Disciplinary Counsel.

### **COUNSEL TO ADVISORY COMMITTEE ROLE**

Rule 5.07(b) provides that the Legal Ethics Counsel shall serve as staff to the Advisory Committee.

#### **Review Summaries**

Pursuant to Rule 5.12, the Advisory Committee reviews investigation files if the OCDC or a Regional Disciplinary Committee finds no probable cause and the complainant requests review. The Legal Ethics Counsel Office summarized and distributed 113 review files.

### Hearings

The Legal Ethics Counsel planned a statewide training session for all Disciplinary Hearing Officers and presented portions of that training session. This was the first training session that had been held since 1996. In connection with this session, the Legal Ethics Counsel worked with the Chair of the Advisory Committee to revise and update the Disciplinary Hearing Manual.

The Legal Ethics Counsel Office provided assistance with arrangements for hearings, as requested, to Disciplinary Hearing Officers.

### Meetings

The Legal Ethics Counsel Office coordinated arrangements for four regular Advisory Committee meetings around the state, as well as one special meeting and several conference call meetings.

### Formal Opinions

The Legal Ethics Counsel provided additional assistance in relation to a formal opinion draft.

### Other Matters

The Legal Ethics Counsel participated in meetings regarding rules proposed by the Missouri Bar on multi-jurisdictional practice and advertising.

The Legal Ethics Counsel prepared a draft of a “statute of limitations” rule for the Advisory Committee that was provided to the Missouri Bar for comment.

The Legal Ethics Counsel worked with a website developer to create a website for the Advisory Committee and Legal Ethics Counsel. The website includes a public area and a private area accessible only to Disciplinary Hearing Officers. The public area includes articles on ethics issues and Rules 4 and 5. The website address is: [www.mo-legal-ethics.org](http://www.mo-legal-ethics.org).

The Legal Ethics Counsel served on the membership and program committees of the National Organization of Bar Counsel.

**MISSOURI BAR  
COMPLAINT RESOLUTION PROGRAM  
ACTIVITY REPORT**

	<b>2004</b>
Total Open Cases in 2004	95
New Cases referred from OCDC	68
Meetings Scheduled/Held	36
Agreements Reached*	19
Complainant Did Not Appear at Scheduled Meeting	1
Respondent Did Not Appear at Scheduled Meeting	0
Agreements Not Reached	10
Pending Conference Report	4
Meeting Held-Parties Resolved After Meeting*	1
Meeting Cancelled – Complainant Did Not Respond	1
Scheduling Conference	3
Cases Closed	75
Pending Closing	7
Complainant Did Not Respond or Consent	11
Respondent Did Not Consent or Respond	1
Respondent Responded But Did Not Consent	2
Respondent Withdraw Consent	3
Parties Resolved without Conference*	12
Complainant Withdraw Complaint*	13
Wrong Respondent Listed on Complaint	1
Pending Receipt of Consent Forms	6
Attorney v Attorney Complaints	1
Total Resolutions*	45

**MISSOURI BAR  
COMPLAINT RESOLUTION PROGRAM**

<b>NATURE OF COMPLAINT</b>	<b>NO.</b>
Client Communication	26
Client's Directive	17
Diligence	9
Other	8
Fees	4
Competence	3
Attorney v Attorney	1

<b>TYPE OF MATTER</b>	<b>NO.</b>
Domestic	19
Other	10
Personal Injury	9
Real Estate	9
Estate/Probate	5
Bankruptcy	3
Litigation	3
Criminal Law	2
Landlord/Tenant	2
Attorney v Attorney	1
Contracts	1
Guardianship	1
Immigration/Naturalization	1
Traffic	1
Workers' Comp	1

**MISSOURI BAR  
COMPLAINT RESOLUTION PROGRAM**

<b>LOCATION OF ATTY.</b>	<b>NO.</b>	<b>LOCATION OF ATTY.</b>	<b>NO.</b>
Bonne Terre	1	Kirkwood	1
Branson	1	Liberty	1
Cape Girardeau	1	Maryville	1
Chesterfield	1	Moberly	1
Columbia	2	N. Kansas City	1
Farmington	1	Osage Beach	1
Festus	1	Rock Port	1
Florissant	1	Springfield	4
Gladstone	1	St. Charles	5
Gower	1	St. Joseph	3
Jackson	1	St. Louis	19
Jefferson City	4	St. Peters	1
Joplin	2	Troy	1
Kansas City	7	Lenexa, KS	1
Kearney	1	Bethalto, IL	1